IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7359 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJUBHAI @ BHARATBHAI VISHWESHARPRASAD MISHRA

Versus

COMMISSIONER OF POLICE

Appearance:

MR BC DAVE for Petitioner

MR UR BHATT for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 05/10/2000

ORAL JUDGEMENT

The petitioner-detenu has, by filing this writ petition under Article 226 of the Constitution of India, challenged the legality and validity of an order of detention dated 15th May, 2000 (Annexure - A) passed by respondent No.1 in exercise of powers conferred on him under Sec.3(2) of the Gujarat Prevention of Antisocial Activities Act, 1985 (in short "the Act").

2. As per the papers of grounds of detention, the

petitioner-detenu is "a bootlegger" within the meaning of section 2(b) of the Act and further that activities of the petitioner are prejudicial to the maintenance of the public order.

3. To arrive at a subjective satisfaction, the detaining authority has placed reliance on one prohibition case bearing C.R.No.217 of 1999 registered in Himmatnagar Town Police Station. The detaining authority i.e. the authority who passed an order of detention also placed reliance on statements of two witnesses, which were recorded on 13th May, 2000. Identity of these two witnesses has not been disclosed by claiming privilege under section 9(2) of the Act. That two statements were verified by the detaining authority on 14th May, 2000 and on the next day the detaining authority passed an order of detention which is challenged in this writ petition.

4. Though rule has been served upon each of respondents, none of the respondents has filed affidavit-in-reply, in reply to this writ petition. Thus, it is clear that the respondents have not controverted the grounds of attack for challenging an order of detention which is the subject matter of this writ petition.

5. Mr.B. C. Dave, learned advocate for the petitioner has argued that in his case, the detaining authority who passed an order of detention placed reliance on statements of two witnesses whose identity has not been disclosed by claiming privilege under section 9(2) of the Act. That two statements of witnesses were verified by the detaining authority on 14th May, 2000 and on the very next day the detaining authority passed an order of detention. Mr.D. C. Dave, learned advocate for the petitioner has cited an authority of KALIDAS CHANDUBHAI KAHAR V/s. STATE OF GUJARAT & OTHERS, reported in 1993 (2) GLR 1659, wherein it has been held that the detaining authority is expected to do some exercise before actually exercising the privilege under section 9(2) of the Act. The detenu would like to verify as to whether these persons are fictitious persons or not and/or whether their statements are bogus statements or not. The privilege claimed by the detaining authority is vitiated, because in this case, the detaining authority had no time to do necessary exercise for verifying the statements, of the witnesses.

6. In view of this, the detaining authority passed an order of detention on 15th May, 2000 which is challenged in this petition, is vitiated for want of time for claiming privilege under section 9(2) of the Act.

7. In view of what is stated hereinabove, this writ petition deserves to be allowed and accordingly it is allowed. The impugned order of detention dated 15th May, 2000 passed by respondent No.1 - detaining authority is quashed and set aside. The detenu is ordered to be released forthwith if he is not wanted in any custody for any criminal case or proceeding. Rule is made absolute. Direct service is permitted.

(H. H. Mehta,J.)

(vijay)